

# OBSERVATIONS by Hyacinthus Pilley upon the CASE of the Respondents, Hugh Madden and Katherine his Wife.

1. **I**T is pretended, That *Geffry Osbaldeston* was, before the Year 1641, seized of the Lands in question, and that on his Intermarriage with *Martha Boyle*, he settled the same to the use of himself for life, Remainder to *Martha* for life, with several Remainders over; and that the said Settlement was proved before the Commissioners of the Court of Claims.

*Answer,* It appears by uncontrollable Evidence, That the said Lands were in 1641 the Estate of *O Connor Roe*, and of other forfeiting Persons, and that *Geffry Osbaldeston* had only the Residue of a Term of Years, all which was granted by *O Connor Roe*, to one *Edward Deane*; and it appears by *John Osbaldeston's* Decree of Innocency, that the Settlement prov'd before the said Commissioners was made by *Edward Osbaldeston*, and not by *Geffry*, and that the Lands in question were not comprized therein.

2. It is said, That these Lands were never seized or sequestred.

*Answer,* The Commissioners in 1656, adjudged them seized and sequestred, and decreed Lands in lieu of them to the Widow and Son and Heir of *O Connor Roe*; and the Commissioners in 1676 adjudged them to be seized and sequestred, and gave Certificate and Patents upon it, against whose Determination in that Point no Evidence can or ought to be now admitted; to do so, would unsettle all *Ireland*. And if such Evidence could be received, and the Respondents could make out their Case, they need not resort for Relief to a Court of Equity, but might have recovered at Law by virtue of their said pretended Settlement, and *Osbaldeston's* Decree of Innocency: And if *Osbaldeston's* Title were as they say, *Pilley* by his Marriage Articles would have been intitled to hold these Lands upon that Title, and might have had other Lands also granted to him for his Deficiency; so that it can't be imagined, that he would chuse to throw away his Deficiencies upon Lands to which he had a good Title before.

3. It is said, That soon after *Peter Pilley* paid the said Patent, the Farmers of Quit-rent distrain'd the same, *Martha* apply'd to the said *Peter Pilley*, alledging, that he had brought that Trouble and Charge upon her, and requiring him to secure her Joynture for her from Quit-rent; That the said *Peter Pilley* preferr'd a Petition setting forth, that these Lands were never seized or sequestred.

*Answer,* All this is Invention, not in Proof in the Cause. But, by the Deposition of the Respondents forsworn Evidence it is said, *He believes Peter Pilley applied by Petition to the Commissioners of the Revenue to abate the Quit-rent of the Premises, and that the Draught of the Petition was Pilley's Hand-writing.*

This Draught of Petition was read on the first Hearing, because no Objection was made to it: but on the Tryal of the Issue at the *Exchequer-bar*, and on the Rehearing, it was adjudged to be no Evidence, and not allowed to be on either read; because there was no proof that any Petition was ever preferred, or any Order made thereon; so that it was offering a Copy in Evidence of which there never was an Original.

4. That the Appellant declined rehearing the Cause when the Court was full, by the Accession of my Lord Chief Barron Freeman.

*Answer,* The Appellant would willingly have proceeded to a Rehearing of the Cause before my Lord Chief Barron Freeman, on equal or indifferent Terms; but before the Lord Chief Barron's arrival in that Kingdom, Mr. Chancellor and Mr. Barron Eccblin, when the Appellant petitioned for a Rehearing, were pleased to gratifie his Desire therein, but at the same time thought fit to put the Respondents into actual possession of the Lands in question; so that the Appellant could have no benefit by a Rehearing on such Terms, unless he could make them change their Opinions: And if the Court should be divided in Opinion, Possession would have been held against him, without any possibility of redress: and therefore he was under a necessity of applying directly to your Lordships by way of Appeal.

There is no Foundation for what is said of the Respondents failing to get a Verdict by reason of one Man's Obstinacy, for most of the best and ablest Men of the Jury were for finding against any Express Trust, the same being only prov'd by Men of Infamous Characters, two of which were by the Court committed for apparent Perjury by them committed on the Tryal.

5. It is said the said *Peter Pilley* died possessed of a personal Estate, worth 1200 l. and seized of a real Estate, worth 100 l. per Annum.

*Answer,* He was not possessed of a personal Estate worth 400 l. nor seized of a real Estate worth 30 l. per Annum, except the Lands in dispute; and he died above 300 l. indebted, and left Issue by the said *Ursula*, still living, the Appellant and three Daughters.

There is no Foundation to say, that *Peter Pilley* brought the said Lands into the common Stock of Reprizals, for the contrary appears most plain, by the Judgment of the Commissioners in 1656 and in 1676, *prout* the Widow *O Connor's* Decree and the said *Peter Pilley's* Certificate.

6. It is said, That the Respondent, Hugh Madden, married the Respondent, Catherine, being advised she had right to the Remainder of the said Premises, after the Death of the said Martha.

*Answer,* By the Respondents Marriage-Articles, it appears, That the Consideration of the said Marriage was the Sum of 100 l. which was to be paid him by the Appellant's Mother, and the said *Hugh* was to allow the said 100 l. if it shou'd afterwards appear, that any other Portion was secured to the Respondent Catherine by any Will or Settlement of her Father; and the Respondent *Hugh* was so sensible of the Weakness of all the Pretensions now made by him, that three Months after his Marriage he attempted to set up a forged Will, and endeavour'd to procure Witnesses to prove the same; as appears by the Affidavits of the Persons that were tamper'd with, and solicited to that purpose.